

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHIFTPIXY, INC.,

Plaintiff,

-v-

GREGORY BERGMAN ET AL.,

Defendants.

22 Civ. 5686 (PAE),  
21 Civ. 7135 (PAE)

[CONSOLIDATED ACTIONS]

ORDER


PAUL A. ENGELMAYER, District Judge:

On November 9, 2022, the Court entered the parties' joint stipulation to dismiss this case, retaining jurisdiction of the action for the purpose of enforcing the terms of the parties' settlement agreement. Dkt. 31. The settlement agreement provides that, "[i]n the event that Defendants fail to make a settlement payment specified . . . and fail to cure such default within five (5) calendar days of receiving written notice of such default," then defendants shall be liable for "an additional Twenty Five Thousand Dollar (\$25,000.00) penalty on top of the Settlement Amount, which shall be recoverable by means of the Confession of Judgment annexed as Exhibit C." Dkt. 36-1 at 2. On May 10, 2023, plaintiff Shiftpixy, Inc. ("Shiftpixy") moved for entry of judgment by confession, representing that defendants had failed to timely disburse the second and third of the three payments due under the settlement agreement. Dkts. 33, 37. In support of its motion, Shiftpixy filed, *inter alia*, an executed copy of the parties' settlement agreement and confession of judgment and its notice by email to defendants as to the alleged default of their payment obligations. *See* Dkts. 36-1–36-4. On May 12, 2023, the Court directed defendants to respond to Shiftpixy's motion by May 24, 2023. Dkt. 38.

Defendants have not responded to Shiftpixy's motion. On review of Shiftpixy's submissions, the Court finds that entry of judgment is proper pursuant to the parties' settlement agreement. Accordingly, the Court enters judgment against defendants in the sum of \$85,000, which represents the outstanding settlement amount and the contracted-for \$25,000 penalty. The Court does not, however, award attorney's fees or prejudgment interest. The settlement agreement provides that the "prevailing party in any dispute related to this Settlement Agreement shall be entitled to its reasonable attorney's fees and its costs." Dkt. 36-1 at 6. Yet Shiftpixy does not provide a basis for the Court to conclude that its request for \$5,200 in attorney's fees is reasonable or find appropriate an award of prejudgment interest. Should Shiftpixy wish to substantiate its request, it shall file, no later than August 7, 2023, a letter in further support of its petition for attorney's fees and prejudgment interest.

The Clerk of Court is respectfully directed to terminate the motion pending at docket number 33. The case remains closed.

SO ORDERED.

  
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PAUL A. ENGELMAYER  
United States District Judge

Dated: July 31, 2023  
New York, New York